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DRAFT AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Prepared by the Secretariat

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DRAFT AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The States Parties to the present Agreement,

Considering that the United Nations Convention on the Law of the Sea provides for the establishment of the International Tribunal for the Law of the Sea,

Recognizing that the Tribunal enjoys such legal capacity, privileges and immunities as are necessary for the exercise of its functions,

Recalling that the Statute of the Tribunal provides, in article 10, that the Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities,

Recognizing that persons participating in proceedings and officials of the Tribunal should enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Tribunal,

Have agreed as follows:

Article 1

Use of terms

For the purposes of this Agreement:

(a) "Convention" means the 1982 United Nations Convention on the Law of the Sea;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea in Annex VI to the Convention;

(c) "States Parties" means States Parties to this Agreement;

(d) "Tribunal" means the International Tribunal for the Law of the Sea;

(e) "Member of the Tribunal" means an elected member of the Tribunal;

(f) "Member ad hoc of the Tribunal" means a person chosen under article 17 of the Statute for the purpose of a particular case;

(g) "officials of the Tribunal" means the Registrar and other members of the staff of the Registry;

(h) "Vienna Convention" means the Vienna Convention on Diplomatic Relations of 18 April 1961.

Article 2

Juridical personality of the Tribunal

The Tribunal shall possess juridical personality. It shall have the capacity:

(a) to contract;

(b) to acquire and dispose of immovable and movable property;

(c) to institute legal proceedings.

Article 3

Inviolability of the premises of the Tribunal

The premises of the Tribunal shall be inviolable, subject to reasonable conditions established by agreement with the State Party concerned.

Article 3 bis

Flag and emblem

The Tribunal shall be entitled to display its flag and emblem in its premises and on vehicles used for official purposes.

Article 4

Immunity of the Tribunal, its property, assets and funds

1. The Tribunal shall enjoy immunity from legal process, except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The property, assets and funds of the Tribunal, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, seizure, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out its functions, the property, assets and funds of the Tribunal shall be exempt from restrictions, regulations, controls and moratoria of any nature.

4. The immunities referred to in this article shall not extend to an action for damages arising from an accident involving a vehicle in respect of which the Tribunal may be liable. Pursuant to the laws and regulations of the State concerned, the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by it.

Article 5

Archives

The archives and documents of the Tribunal shall be inviolable at all times and wherever they may be located. The location of the archives of the Tribunal shall be made known to the State Party concerned.

Article 6

Exercise of the functions of the Tribunal outside the Headquarters

In the event that the Tribunal sits and exercises its functions elsewhere than at its Headquarters it may conclude with the State concerned an arrangement concerning the provision of the appropriate facilities for the exercise of its functions.

Article 7

Communications

1. For the purposes of its official communications, the Tribunal shall enjoy in the territory of each State Party, in so far as is compatible with the international obligations of the State concerned, treatment not less favourable than that which the State Party accords to any intergovernmental organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mails and the various forms of communications.

2. The Tribunal may use all appropriate means of communications and make use of codes for its official communications. The official communications and correspondence of the Tribunal shall be inviolable. States Parties shall not apply any censorship or any other form of interference with such communications.

3. The Tribunal shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall have the same privileges, immunities and facilities as diplomatic couriers and bags.

Article 8

Exemption from taxes, customs duties and import or export restrictions

1. The Tribunal, its assets, income and other property, and its operations and transactions shall be exempt from all direct taxes; it is understood, however, that the Tribunal shall not claim exemption from taxes which are no more than charges for public utility services.

2. The Tribunal shall be exempt from all customs duties, import turnover taxes and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Tribunal for its official use. Goods imported or purchased under such an exemption shall not be sold or otherwise disposed of in the territory of a State Party, except under conditions agreed with the Government of that State Party. The Tribunal shall also be exempt from all customs duties, import turnover taxes, prohibitions and restrictions on imports and exports in respect of its publications.

Article 9

Reimbursement of duties and/or taxes

The Tribunal shall not, as a general rule, claim exemption from duties and taxes which are included in the price of movable and immovable property and taxes paid for services rendered. Nevertheless, when the Tribunal for its official use makes major purchases of property and goods or services on which duties and taxes are charged or are chargeable, States Parties shall make appropriate administrative arrangements for the exemption of such charges or reimbursement of the amount of duty and/or tax paid.

Article 10

Taxation

1. The salaries and emoluments paid to Members, Members ad hoc and the Registrar and other officials of the Tribunal shall be exempt from taxation.

2. Where the incidence of any form of taxation depends upon residence, periods during which such Members or officials are present in a State for the discharge of their functions shall not be considered as periods of residence.

3. States Parties shall not be obliged to exempt from income tax pensions or annuities paid to former Members and former officials of the Tribunal.

Article 11

Funds and freedom from currency restrictions

1. Without being restricted by financial controls, regulations or financial moratoria of any kind, while carrying out its activities:

(a) the Tribunal may hold funds or currency of any kind and operate accounts in any currency;

(b) the Tribunal shall be free to transfer its funds or currency from one country to another or within any country and to convert any currency held by it into any other currency;

(c) the Tribunal may receive, hold, negotiate, transfer, convert or otherwise deal with bonds and other financial securities.

2. In exercising its rights under paragraph 1, the Tribunal shall pay due regard to any representations made by any State Party in so far as it is considered that effect can be given to such representations without detriment to the interests of the Tribunal.

Article 12

Members and Members ad hoc of the Tribunal

1. Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy the privileges, immunities, facilities and prerogatives accorded to heads of diplomatic missions in accordance with the Vienna Convention.

2. Members of the Tribunal and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Tribunal is sitting. On journeys in connection with the exercise of their functions, they shall in all countries through which they may have to pass enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents in similar circumstances.

3. If Members of the Tribunal, for the purpose of holding themselves at the disposal of the Tribunal, reside in any country other than that of which they are nationals or permanent residents, they shall, together with the members of their families forming part of their households, be accorded diplomatic privileges, immunities and facilities during the period of their residence there. The States concerned must exercise their jurisdiction over those persons in such a manner as not to interfere with the functions of the Tribunal.

4. In order to secure, for Members of the Tribunal, complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken or written and all acts done by them while discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer Members of the Tribunal or performing those functions.

5. Members of the Tribunal shall be accorded, together with members of their families forming part of their households, the same repatriation facilities in time of international crises as diplomatic agents are accorded under the Vienna Convention.

6. Privileges, immunities, facilities and prerogatives are accorded to the Members of the Tribunal not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

7. This article shall apply to Members of the Tribunal even after the expiry of their terms of office if they continue to exercise their functions in accordance with article 5, paragraph 3, of the Statute.

8. This article shall also apply to Members ad hoc of the Tribunal.

Article 13

Officials

1. The Registrar shall, when engaged on the business of the Tribunal, be accorded diplomatic privileges, immunities and facilities.

2. Other officials of the Tribunal shall enjoy in any country where they may be on the business of the Tribunal, or in any country through which they may pass on such business, such privileges, immunities and facilities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the official concerned;

(c) immunity from legal process in respect of words spoken or written and all acts done by them while discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(d) immunity from national service obligations;

(e) exemption from immigration restrictions or alien registration;

(f) the same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank forming part of diplomatic missions to the Government concerned;

(g) the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question and to re-export the same free of duty to their country of permanent residence;

(h) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

3. The immunities referred to in this article shall not extend to an action for damages arising from an accident involving a vehicle in respect of which the officials of the Tribunal may be liable. Pursuant to the laws and regulations

of the State concerned, the officials of the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by them.

4. The Registrar shall specify the categories of officials to which the provisions of this article shall apply. He shall submit these categories to the Tribunal. These categories shall also be communicated to all States Parties. The names of the officials included in these categories shall from time to time be communicated to all States Parties.

Article 14

Experts appointed under article 289 of the Convention

1. Experts appointed under article 289 of the Convention shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, such privileges, immunities and facilities as are necessary for the independent exercise of their functions. In particular, they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the expert concerned;

(c) immunity from legal process in respect of words spoken or written and acts done by them while discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) exemption from immigration restrictions or alien registration;

(f) the same facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

2. Such experts shall be accorded the same repatriation facilities in time of international crises as diplomatic agents are accorded under the Vienna Convention.

Article 15

Agents, counsel and advocates

1. Agents representing parties to proceedings before the Tribunal as well as counsel and advocates designated to appear before it shall be accorded the privileges, immunities and facilities necessary for the independent exercise of their functions during their journey to and from the place where the Tribunal is sitting, and while exercising their functions. In particular, they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the State Party concerned; an inspection in such a case shall be conducted in the presence of the agent, counsel or advocate concerned;

(c) immunity from legal process in respect of words spoken or written and all acts done by them while discharging their functions, which immunity shall continue even after they have ceased to exercise their functions;

(d) inviolability of documents and papers;

(e) the right to receive papers or correspondence by courier or in sealed bags;

(f) exemption from immigration restrictions or alien registration;

(g) the same facilities in respect of their personal baggage and in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;

(h) the same repatriation facilities in time of international crises as are accorded to diplomatic agents under the Vienna Convention.

2. Upon receipt of notification from parties to proceedings before the Tribunal as to the appointment of an agent, counsel or advocate, a certification of the status of such representative shall be provided under the signature of the Registrar and limited to a period reasonably required for the proceedings.

3. The competent authorities of the State concerned shall accord the privileges, immunities and facilities provided for in this article upon production of the certification referred to in paragraph 2.

4. Where the incidence of any form of taxation depends upon residence, periods during which such agents, counsel or advocates are present in a State for the discharge of their functions shall not be considered as periods of residence.

Article 16

Witnesses, experts and persons performing missions

1. Witnesses, experts and persons performing missions by order of the Tribunal shall be accorded, during the period of their missions, including the time spent on journeys in connection with their missions, the privileges, immunities and facilities provided for in article 14, paragraph 1, subparagraphs (a) to (f).

2. Witnesses, experts and such persons shall be accorded repatriation facilities in time of international crises.

Article 17

Respect for laws and regulations

1. Without prejudice to their privileges and immunities, it is the duty of all persons referred to in articles 12 to 16 to respect the laws and regulations of the State Party in whose territory they may be on the business of the Tribunal or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that State.

2. Privileges and immunities, facilities and prerogatives in accordance with articles 13 to 16 of this Agreement are granted not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions in connection with the Tribunal.

Article 18

Waiver

1. Inasmuch as the privileges and immunities referred to in articles 13 to 16 are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves, the competent authority has the right and the duty to waive the immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the administration of justice.

2. For this purpose, the competent authority in the case of agents, counsel and advocates representing or designated by a party to proceedings before the Tribunal will be the party concerned. In the case of the Registrar, experts appointed under article 289 of the Convention and witnesses, experts and persons performing missions, the competent authority will be the Tribunal. In the case of other officials of the Tribunal, the competent authority will be the Registrar, acting with the approval of the President of the Tribunal.

Article 19

Laissez-passer and visas*

1. The Tribunal may issue laissez-passer to the Members and officials of the Tribunal. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of States Parties, taking into account the provisions of paragraph 2.

2. Applications for visas (where required) from the Members of the Tribunal and the Registrar shall be dealt with as speedily as possible. Applications for visas from all other holders of laissez-passer issued by the Tribunal and from persons referred to in articles 14, 15 and 16, when accompanied by a certificate that they are travelling on the business of the Tribunal, shall be dealt with as speedily as possible.

Article 20

Freedom of movement

No administrative or other restrictions shall be imposed on the free movement of Members of the Tribunal and other persons referred to in articles 12 to 16 to and from the Headquarters of the Tribunal or the place where the Tribunal is sitting or exercising its functions.

Article 21

Maintenance of security and public order

1. If the State Party concerned considers it necessary to take, without prejudice to the independent and proper working of the Tribunal, measures necessary for the security or for the maintenance of public order of the State Party in accordance with international law, it shall approach the Tribunal as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the Tribunal.

2. The Tribunal shall cooperate with the Government of such State Party to avoid any prejudice to the security or public order of the State Party resulting from its activities.

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* In the event that arrangements are entered into with the United Nations for the issuance of laissez-passer of the United Nations, the Tribunal may not need to issue its own laissez-passer.

Article 22

Cooperation with the authorities of States Parties

The Tribunal shall cooperate at all times with the appropriate authorities of States Parties to facilitate the execution of their laws and to prevent any abuse in connection with the privileges, immunities and facilities referred to in this Agreement.

Article 23

Settlement of disputes

1. The Tribunal shall make suitable provisions for the settlement of:

(a) disputes arising out of contracts and other disputes of a private law character to which the Tribunal is a party;

(b) disputes involving any person referred to in articles 13 to 16 who by reason of his official position enjoys immunity, if such immunity has not been waived in accordance with article 18.

2. All disputes arising out of the interpretation or application of this Agreement shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Tribunal on the one hand and a State Party on the other hand, which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three arbitrators: one to be chosen by the Tribunal, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the Secretary-General of the United Nations shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators, the Chairman shall be chosen by the Secretary-General of the United Nations upon the request of the Tribunal or the State Party.

Article 24

Signature

This Agreement shall be open for signature by all States and shall remain open for signature at United Nations Headquarters for twelve months from the .... of .... 199..

Article 25

Ratification

This Agreement is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

Accession

This Agreement shall remain open for accession by all States. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State which ratifies the Agreement or accedes thereto after the deposit of the fifteenth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 28

Ad hoc application

Where a dispute has been submitted to the Tribunal in accordance with its Statute, any State other than a State Party which is a party to the dispute may, ad hoc for the purposes and duration of the case relating thereto, become a party to this Agreement by the deposit of an instrument of acceptance. Instruments of acceptance shall be deposited with the Secretary-General of the United Nations and shall become effective on the date of deposit.

Article 29

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 30

Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 31

Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 32

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

OPENED FOR SIGNATURE at New York, this .... day of one thousand nine hundred and ...., in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.